



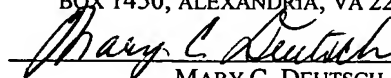
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>Applicant:</b> WEAVER, ET AL	<b>Examiner:</b> A. K. Robinson Boyce
<b>Serial No.:</b> 10/002,566	<b>Group Art Unit:</b> 3628
<b>Filed:</b> NOVEMBER 1, 2001	
<b>For:</b> SYSTEM AND METHOD FOR CATEGORY MANAGEMENT ANALYSIS	<b>Docket No.</b> 5603USA (GMI0055/US)

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MARY C. DEUTSCH

APPEAL BRIEF

Dear Sir or Madam:

This Appeal Brief is being submitted in support of an Appeal from the Final Rejection mailed March 26, 2008, in connection with the above-identified patent application.

A Notice of Appeal was filed on June 26, 2008 and received in the US Patent Office on June 30, 2008 with the required fees of \$510.00 for the Notice of Appeal.

Enclosed is a check in the amount of \$510.00 for filing this Appeal Brief. It is believed that no other fee(s) are required in filing this paper. However, if any other fee(s) are required, then Applicants hereby authorize such fee(s) therefore to be charged to the Kagan Binder Deposit Account No. 50-1775 and notify us of the same.

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**I. Real Party in Interest**

General Mills Marketing, Inc., the assignee of record, is the real party in interest.

## **II. Related Appeals and Interferences**

None.

### **III. Status of Claims**

Claims 1-4 have been cancelled.

Claims 5-8 have been rejected.

Claim 9 has been cancelled.

Claims 10-13 have been rejected.

Claim 14 has been cancelled.

Claims 15-20 have been rejected.

The rejection of claims 5-8, 10-13 and 15-20 is appealed.

#### **IV. Status of Amendments**

There were no amendments after the final rejection proposed in this application.  
All previous amendments have been entered.

## V. Summary of Claimed Subject Matter

The present invention relates to a category management method, which is exemplified by claim 6 - the sole independent claim:

6. A category management method comprising:  
    obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set;  
    using automated analysis to analyze at least a portion of said obtained data; and  
    providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for an intended retailer end user. (emphasis added)

The method comprises a three step process, comprising 1) obtaining data, 2) analyzing the data, and 3) providing an integrated category management report based at least in part on said analysis.

The product of the method is unique. The product is an “integrated category management report,” which is a defined term that provides a significant distinction. “Category Management” is more than simply carrying out inventory control, but involves understanding the product desires of the customer demographic of a particular store, and recognizing the best product offerings and presentation of the products within that retail location to maintain customers and generate more sales. (page 1, paragraph [0003]). An integrated category management report is not a mere organization of information from various databases, but instead is a targeted opportunity assessment and market analysis at least partially customized for the intended end user. (page 7, paragraph [0018]).

Collection and correlation of information needed to carry out such analysis can be extremely burdensome, and taking the next step to actually carry out the analysis meaningful to a specific retail location is overwhelmingly difficult. (page 4, paragraphs [0009] and [0010]).

The present claims specifically require that the report is customized for an intended retailer end user (page 7, lines 15-17). This is significant, because the report

provides an accessible analysis that was not previously available to these customers. The integrated category management report provides information not limited to promoting sales of a single product in competition with another product, or of choosing which product to offer that a customer will want, but instead provides the retailer with a strategy of a combination of different products or product brands that will generate more sales and improve customer satisfaction with the retail establishment (page 2, paragraph [0005]).

The present invention provides significant advantages in providing timely relevant information to retailers that can be tailored to provide useful information for operation of a single retail outlet. Through the method of the present invention, multiple dynamically changing data streams can be analyzed to provide a sophisticated retail marketing plan that far exceeds the capabilities and impact of ordinary inventory control techniques. Further, the method of the present invention makes such sophisticated opportunity assessments and market analyses available to smaller retailers and to a degree of detail that was not possible before. See the present specification at pages 4-6.

Claim 11 relates to an embodiment of the present invention where the report provides a score card that tracks the category management over time. In the present specification, a score card is defined in paragraph [0016] as a formatted presentation that tracks retailer progress after objectives and action plans have been defined.

Claim 20 relates to an embodiment of the present invention where one of the data sets of the data relates to cereals (page 10, line 2).

Claim 13 relates to an embodiment of the present invention where the report is delivered over a network that is a local area network (page 10, line 24).

Claim 16 relates to an embodiment of the present invention where integrated category management report includes at least one suggestion for improving the sales of at least one product (page 19, line 10-13).

Claim 17 relates to an embodiment of the present invention where said integrated category management report includes at least one suggestion for improving the sales of a category of products (page 19, line 10-13).



Claim 19 relates to an embodiment of the present invention where said data sources further include at least one planogram (page 18, line 22).

## **VI. Grounds of Rejection to be Reviewed on Appeal**

A. Does Johnson (US 2002/0082900 A1) teach the presence of all of the elements of claims 5-8, 10, 12, 15, and 18?

B. Has the Examiner established a *prima facie* case to support the rejection of claim 11 and 20 under 35 USC 103(a) as being unpatentable over Johnson (US 2002/0082900 A1), as applied to claim 6 above, and further in view of Dippold, (US 2002/0133479 A1)?

C. Has the Examiner established a *prima facie* case to support the rejection of claims 13, 16, 17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 2002/0082900 A1), as applied to claim 6 above, and further in view of McConnell et al, (US 2001/0049690 A1)?

## **VII. Argument**

### **A. Johnson (US 2002/0082900 A1) does not teach the presence of all of the elements of claims 5-8, 10, 12, 15, and 18.**

Johnson describes a web-based solvent supplier information site. In this system, customers input their needs and the site directs them to different suppliers and products. The Johnson system additionally collects market trend data and issues rebate certificates to the customer/users (Johnson paragraph [0006]). The Johnson system additionally generates a report to the suppliers, that is a listing of the inquiry history of specific buyers on the website -such as which solvents they wanted to look at, which solvents they did not want to look at, Sample Requests and Requests for Quotes. (Johnson paragraphs [0038]-[0043]).

The collected data is sent to suppliers so each supplier can make individual business and marketing decisions (i.e. find ways to sell their individual products (Johnson paragraph [0008])). Thus, Johnson never gets past the first step of the instant claims - of obtaining and communicating data.

The Johnson system does nothing to provide a report to increase sales or profits of a retailer in a market category - it only provides data useful to individual suppliers to try to sell their own product to the disadvantage of other suppliers. This is a zero sum game - one supplier wins when another loses. No retailer is provided with an integrated category management report. The Advisory Action states that Johnson also may forward market research and trend data to “users,” as well as suppliers. However, the users as defined in Johnson are the actual users (ultimate customers) of the product, and are not retailers as required in the present claims.

It is respectfully submitted that the Johnson disclosure describing a system for exchange of information between suppliers and ultimate customers does not anticipate the presently claimed method for providing an integrated category management report that is a targeted opportunity assessment and market analysis at least partially customized for the intended retailer end user.

Additionally, it is noted that the Final Rejection states that Johnson provides a “price quote.” On close review, one will recognize that Johnson actually describes a report of the fact that the customer requested a price quotation (see Johnson paragraph [0065]). This request for price quotation is not a “pricing suggestion” as required in instant claim 15.

Thus, Johnson does not teach the presence of the elements of using automated analysis to analyze at least a portion of said obtained data, and of providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for an intended retailer end user, as required by the present claims.

**B. The Examiner has not established a *prima facie* case to support the rejection of claims 11 and 20 under 35 USC 103(a) as being unpatentable over Johnson (US 2002/0082900 A1), as applied to claim 6 above, and further in view of Dippold, (US 2002/0133479 A1).**

The claims of this rejection relate to providing (1) a method comprising a score card that tracks said category management over time and (2) the method wherein at least one of said data sets relates to cereal.

Dippold describes a market research database that facilitates the management of, and access to, information related to agricultural products, including cereal. This system collects data about products from various sources and links this information by UPC code. See paragraphs [0007], [0024], [0025] and [0033]. The thus correlated information can be retrieved by UPC code, and on a selective basis can be made available for purchase by third parties on a controlled and restricted basis. See Paragraph [0008].

The system discussed in Dippold is in fact identified in the present application as one of the data inputs to be contained in the supporting database. See instant page 9, line 11, which describes the market research data provided by the A.C. Nielsen Company. The data as described in Dippold therefore corresponds only to the first

element of the present claim, (i.e. “obtaining data”). Dippold thus provides a database of background information, and does not carry out the additional steps of automated analysis and providing an integrated category management report that is a targeted opportunity assessment and market analysis at least partially customized for the intended end user. Dippold provides no reason for the skilled artisan to carry on the additional steps required in the present claims. The skilled artisan is not taught, and would not have contemplated, preparation of a complete targeted opportunity assessment and market analysis at least partially customized for the intended retailer end user in view of the Dippold disclosure.

Dippold is therefore similarly situated to Johnson, because it does not provide a reason to prepare a complete targeted opportunity assessment and market analysis at least partially customized for the intended retailer end user. It is respectfully submitted that the combination of Dippold with Johnson falls far short of the presently claimed invention. Rather, the combination of Johnson with Dippold would result in a system to supply product inquiry and purchase information from customers to individual cereal suppliers, and not information to the retailer that would help the retailer maximize profits and sales of all cereals.

Claim 11 has specifically been discussed in the outstanding 103(a) rejection of the Final Office Action, focusing on the preferred embodiment where a score card is provided that tracks the category management over time.

In the present specification, a score card is defined in paragraph [0016] as a formatted presentation that tracks retailer progress after objectives and action plans have been defined. In contrast, paragraph [0033] of Dippold does not describe a score card, but rather discusses “scoring rules” for a data mining software program. Thus, the subject matter of the present claim is in no way taught or suggested by Dippold. It is therefore respectfully submitted that the Examiner has not established a *prima facie* case of obviousness of claim 11 because this claim, when properly read in light of the specification, clearly relates to a different concept than taught by the reference.

Claim 20 has also specifically been discussed in the outstanding 103(a) rejection of the Final Office Action, focusing on the preferred embodiment where one of the data sets relates to cereals. As noted above, however, the disclosure of Dippold

stops at the first step of the three part process recited in claim 6. Applicant does not claim to be the first to present data related to breakfast cereals, but does claim to be the first to obtain data, perform a subsequent automated analysis on the obtained data, and then generate a targeted opportunity assessment at least partially customized for the intended retailer end user. It is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness of claim 20 over Johnson in combination with the Dippold disclosure.

**C. The Examiner has not established a *prima facie* case to support the rejection of claims 13, 16, 17, and 19 under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 2002/0082900 A1), as applied to claim 6 above, and further in view of McConnell et al, (US 2001/0049690 A1).**

The outstanding 103(a) rejection focuses on the preferred embodiments where a report is delivered over a network or a LAN, where the report contains a suggestion for improvement or where the data sources includes a planogram.

As noted above, Johnson discloses a centralized system for providing information of several suppliers to a user over the Internet in order to satisfy user defined needs, collecting market trend data and issuing rebate certificates.

In contrast, McConnell discloses an inventory control system that monitors the effective velocity of items through a store or warehouse. This system provides effective inventory control (i.e., tells the store inventory manager when to restock product), which is very useful and important in operating a store or a group of stores.

The two systems described in the cited prior art are separate tools that are addressed to different professionals in the retail industry – the supplier/ultimate-customer (in the case of Johnson) and the store manager in charge of stock inventory (in the case of McConnell). It is respectfully submitted one would have had no reason to combine these references because of their different applications and intended audiences. Additionally, even if one would combine the references, the combination falls far short of teaching or suggesting an integrated category management report using automated analysis that is a targeted opportunity assessment and market analysis at

least partially customized for the intended retailer end user, as presently claimed. Neither reference performs or suggests an automated assessment as required in the present claims, and neither reference suggests generation of a targeted opportunity assessment and market analysis. Such a report would not have been contemplated, because the references do not address the unique challenges of category management issues related to decreased sales and diminished customer satisfaction that occurs by staying with established stocks of products. See instant paragraph [0004]. Thus, the presently claimed invention efficiently addresses problems that are not considered by the cited prior art.

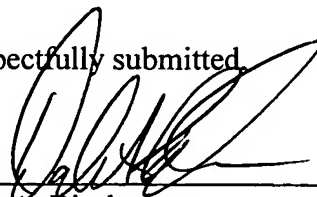
The references fail to teach or suggest an integrated category management report as presently claimed. Because the present report itself is not obvious as discussed above, dependent claims additionally reciting the method of communicating the report are also not obvious.

It is therefore respectfully submitted that the Examiner has not established a *prima facie* case of obviousness of the present claims over Johnson in view of McConnell.

### Conclusion

It is respectfully submitted that the Appellants have shown that the rejections of claims 5-8, 10-13 and 15-20 are unsound and must be reversed. It is also respectfully submitted that that the pending claims are in condition for immediate allowance. Favorable action by the Board and allowance of all claims is, therefore, respectfully solicited

Dated: September 2, 2008

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### **VIII. Appendix – Claims on Appeal**

1-4. (cancelled)

5. The method of claim 6 further including dynamically including or excluding further detailed information from said report depending on whether additional analysis results are available.

6. A category management method comprising:  
obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set;  
using automated analysis to analyze at least a portion of said obtained data; and  
providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for an intended retailer end user.

7. The method of claim 6 further including delivering said integrated category management report at least in part over a network.

8. The method of claim 7 wherein said integrated category management report includes interactive fields that can call up additional information.

9. (cancelled)

10. The method of claim 7 further including dynamically including or excluding further detailed information from said integrated category management report depending on whether additional analysis results are available.

11. The method of claim 7 further including providing a score card that tracks said category management over time.



12. The method of claim 7 wherein said network is the Internet.
13. The method of claim 7 wherein said network is a local area network.
14. (cancelled)
15. The method of claim 6 wherein said integrated category management report includes a pricing suggestion for at least one product.
16. The method of claim 6 wherein said integrated category management report includes at least one suggestion for improving the sales of at least one product.
17. The method of claim 6 wherein said integrated category management report includes at least one suggestion for improving the sales of a category of products.
18. The method of claim 6 wherein said integrated category management report includes at least one report segment selected from the group consisting of consumer assessment, category assessment, pricing analysis, promotion analysis, placement analysis, and product assortment analysis.
19. The method of claim 6 wherein said data sources further include at least one planogram.
20. The method of claim 6 wherein at least one of said data sets relates to cereal.

## **IX. Appendix - Evidence**

None.

## **X. Appendix - Related Proceedings**

None.

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